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9 Attorneys for Defendant,
10 JUST FOR WRAPS, INC.

11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF NEW YORK**
14

15 CAMERON INDUSTRIES, INC., } Case No. 07 Civ. 8335
16 }
17 Plaintiff, }
18 } **DEFENDANT JUST FOR WRAPS'**
19 -against- } **ANSWER AND COUNTERCLAIM**
20 JUST FOR WRAPS, INC., }
21 } Amended Complaint filed:
22 Defendant. } July 15, 2008
23

24 Just for Wraps, Inc. ("Defendant") answers the above captioned Complaint of
25 Cameron Industries, Inc. ("Plaintiff") and asserts its affirmative defenses and
26 counterclaim as follows:
27

28 **JURISDICTION AND VENUE**

1. In answer to the allegations contained in Paragraph 1 of the Complaint,
Defendant admits the action arises under the Copyright Act of 1976, Title 17 U.S.C.
§ 101, *et seq.* Defendant admits that this Court has federal question jurisdiction under
28 U.S.C. §§ 1391(c) and 1338 (a), (b). Defendant admits venue is proper in this
District.

PARTIES

2. In answer to the allegations contained in Paragraph 4 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

3. Defendant is a California corporation and does business in California at 5815 Smithway Street, Commerce, CA 90040 and has an office at 1407 Broadway New, York, NY 10018. Defendant admits that it sells apparel to retail stores. Since Plaintiff has not defined the terms in Paragraph 3 that are not within common industry usage, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3, and on that basis denies them.

PLAINTIFF'S COPYRIGHTED WORK

4. In answer to the allegations contained in Paragraph 4 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

5. In answer to the allegations contained in Paragraph 5 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

6. In answer to the allegations contained in Paragraph 6 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

7. Defendant denies the allegations contained in Paragraph 7.

8. In answer to the allegations contained in Paragraph 8 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

9. Defendant denies the allegations contained in Paragraph 9.

10. In answer to the allegations contained in Paragraph 10 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the

1 truth of the allegations, and on that basis denies them.

2 11. In answer to the allegations contained in Paragraph 11 of the Complaint,
3 Defendant admits that a Certificate of Registration is annexed to the Complaint as
4 Exhibit "A", but denies the remaining allegations contained in Paragraph 11 of the
5 Complaint.

6 12. Defendant denies the allegations contained in Paragraph 12.

7 13. In answer to the allegations contained in Paragraph 13 of the Complaint,
8 Defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations regarding the origin and identity of the photocopies in
10 Exhibits "B" and "C" annexed to the Complaint, and on that basis denies the
11 allegations contained in Paragraph 13.

12 14. Defendant denies the allegations contained in Paragraph 14.

13 15. Defendant denies the allegations contained in Paragraph 15.

14 16. Defendant denies the allegations contained in Paragraph 16.

15 17. Defendant denies the allegations contained in Paragraph 17.

16 18. Defendant denies the allegations contained in Paragraph 18.

17 19. Defendant denies the allegations contained in Paragraph 19.

18 20. Defendant denies the allegations contained in Paragraph 20.

19 21. Defendant denies the allegations contained in Paragraph 21.

20 22. Defendant denies the allegations contained in Paragraph 22.

21
22 **AFFIRMATIVE DEFENSES**

23
24 **FIRST AFFIRMATIVE DEFENSE**

25 Defendant's alleged activities does not infringe or otherwise violate any
26 alleged rights of Plaintiff under the Copyright Act.

27 ///

28 ///

1 **SECOND AFFIRMATIVE DEFENSE**

2 Upon information and belief, copyright protection is not available for
3 Plaintiff's alleged design because the design is not original.
4

5 **THIRD AFFIRMATIVE DEFENSE**

6 Upon information and belief, Plaintiff does not have a valid claim for copyright
7 infringement because Defendant's two-dimensional graphic artworks were created
8 independently without reference to Plaintiff's alleged design.
9

10 **FOURTH AFFIRMATIVE DEFENSE**

11 Upon information and belief, Plaintiff failed to register its copyright within five
12 years of the first publication of the work. Accordingly, the presumption in 17 U.S.C.
13 § 410 that registration constitutes *prima facie* evidence of the validity of the
14 copyright is not applicable.
15

16 **FIFTH AFFIRMATIVE DEFENSE**

17 Upon information and belief, Plaintiff has suffered no damage and/or has failed
18 to mitigate its damages, if any.
19

20 **SIXTH AFFIRMATIVE DEFENSE**

21 Upon information and belief, Plaintiff's copyright registration is invalid.
22

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 The alleged damages sustained by Plaintiff, if any, are the proximate result of
25 the acts and/or commissions of parties over which Defendant exercised no control.
26

27 **EIGHTH AFFIRMATIVE DEFENSE**

28 The Complaint fails to join a necessary and/or indispensable party, namely the

1 rightful owner of the Copyright.

2
3 **NINTH AFFIRMATIVE DEFENSE**

4 Upon information and belief, the Complaint and each and every purported
5 claim for relief set forth therein are barred because the alleged transfer of copyright
6 from the original authors to Plaintiff violates the Copyright Act.

7
8 **TENTH AFFIRMATIVE DEFENSE**

9 Upon information and belief, Plaintiff lacks standing to bring this action.

10
11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 Upon information and belief, the Complaint and each and every purported
13 claim for relief set forth therein are barred by the doctrine of unclean hands.

14
15 **TWELFTH AFFIRMATIVE DEFENSE**

16 Defendant is informed and believes and thereon alleges that the Complaint fails
17 to state a claim upon which relief can be granted.

18
19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 Defendant is informed and believes and thereon alleges that the Complaint is
21 barred by the doctrine of waiver.

22
23 **DEFENDANT'S COUNTERCLAIM**

24 1. Defendant Just for Wraps, Inc. hereby asserts the following counterclaim
25 against Plaintiff and Counterdefendant Cameron Industries, Inc.

26 2. Defendant's counterclaim for declaratory relief is brought pursuant to the
27 Declaratory Judgment Act, 28 U.S.C. §§2201, *et seq.*, and the Copyright Act, 17
28 U.S.C. § 101, *et seq.*

1 3. This Court has subject matter jurisdiction over Defendant's counterclaim
2 pursuant to 28 U.S.C. §§1331 and 1338.

3 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
4 because Counterdefendant is subject to personal jurisdiction within it.

5
6 **THE PARTIES**

7 5. Just for Wraps, Inc. is a California corporation.

8 6. Upon information and belief, Counterdefendant is a New York
9 corporation with its principal place of business in New York, NY.

10
11 **GENERAL ALLEGATIONS**

12 7. Counterdefendant has alleged that the Defendant has sold goods bearing
13 Counterdefendant's Subject Design (as defined in Paragraphs 4-13 of the Complaint).

14 8. Counterdefendant has alleged that Defendant infringes U.S. Copyright
15 Registration No. VA 1-339-483.

16 9. Upon information and belief, Counterdefendant's Subject Design is a
17 reproduction created by an individual and/or entity other than, and not affiliated in
18 any way, with Counterdefendant.

19 10. Upon information and belief, the design of Defendant's accused
20 garments were created long before Counterdefendant or its agents first fixed its
21 Subject Design.

22 11. Upon information and belief, other manufacturers and merchants have
23 also incorporated Defendant's public-domain design into and on other goods.

24
25 **COUNTERCLAIM**
26 (Declaration of Invalidity of Plaintiff's Copyright)

27 12. Defendant hereby incorporates by reference the allegations of Paragraphs
28 1 through 11 of the Counterclaim above.

1 13. Counterdefendant has sued Defendant for infringement of U.S.
2 Copyright Registration No. VA 1-339-483. Therefore, there is substantial, actual and
3 continuing controversy between the parties herein as to the infringement, validity and
4 enforceability of U.S. Copyright Registration No. VA 1-339-483.

5 14. U.S. Copyright Registration No. VA 1-339-483 is invalid because the
6 subject design is not an original work and are the result of fraud and deceit.

7 15. Defendant therefore seeks a declaration that U.S. Copyright Registration
8 No. VA 1-339-483 is invalid and unenforceable. Such declaration will completely
9 and finally resolve the parties' rights with respect to the purported copyright.

10
11 **PRAYER**

12 (1) Plaintiff take nothing by way of its Complaint, and that the Complaint be
13 dismissed with prejudice;

14 (2) Plaintiff's request for pendente lite and permanent injunctions be denied
15 with prejudice;

16 (3) The Court enter judgment that U.S. Copyright Registration No. VA 1-
17 339-483 is invalid and unenforceable;


18 (4) Defendant be awarded costs and reasonable attorney fees from Plaintiff;
19 and

20 (5) The Court grant such and further relief as it deems just.

21
22 Dated: July 28, 2008

Respectfully submitted,

23 THE SONI LAW FIRM

24
25 By: 
26 Surjit P. Soni
27 Ronald E. Perez
28 Attorneys for Defendant
JUST FOR WRAPS, INC.

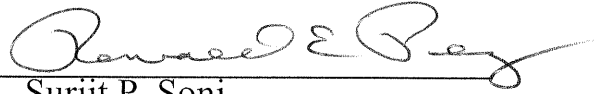
DEMAND FOR JURY TRIAL

Defendant and Counterclaimant Just for Wraps, Inc. hereby demands a jury trial in the above-entitled action.

Dated: July 28, 2008

Respectfully submitted,

THE SONI LAW FIRM

By: 
Surjit P. Soni
Ronald E. Perez
Attorneys for Defendant
JUST FOR WRAPS, INC.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18,
4 and not a party to the within action; my business address is 55 South Lake Avenue, Suite 720,
Pasadena, California 91101.

5 On **July 28, 2008**, I served the foregoing document described as **DEFENDANT JUST FOR**
6 **WRAPS' ANSWER AND COUNTERCLAIM** to the interested parties in this action by placing a
true copy thereof, enclosed in a sealed envelope addressed as follows:

7
8 Jed R. Schlacter, Esq.
SCHLACTER & ASSOCIATES
9 450 Seventh Avenue, Suite 1308
New York, NY 10123-0101

10 ☒ (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing
11 correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service
12 on that same day, with postage thereon fully prepaid at Pasadena, California, in the ordinary course
13 of business. I am aware that on motion of the party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one day after date of deposit for mailing in
affidavit.

14 ☐ (PERSONAL SERVICE) I caused the above referenced document to be personally served by
15 hand on the addressees listed above

16 ☐ (VIA FEDERAL EXPRESS) I caused such envelope to be delivered to addressees listed
above.

17 ☐ (FACSIMILE) I caused the attached document to be transmitted to: the above addressees

18 ☐ (ELECTRONIC MAIL) I caused the attached document to be transmitted to: the above
19 addressees

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on **July 28, 2008**, at Pasadena, California.

22
23 
24 Ronald E. Perez